

HOUSE BILL NO. 571

INTRODUCED BY S. REICHNER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MORTGAGE LENDING LAWS; EXPANDING THE MORTGAGE BROKER AND LOAN ORIGINATOR ACT TO INCLUDE MORTGAGE LENDERS; IMPLEMENTING PROVISIONS OF THE FEDERAL SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 WITH RESPECT TO MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS; REPEALING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; AMENDING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-108, 32-9-109, 32-9-110, 32-9-115, 32-9-116, 32-9-117, 32-9-118, 32-9-121, 32-9-123, 32-9-124, 32-9-126, 32-9-130, AND 32-9-133, MCA; REPEALING SECTIONS 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, AND 32-10-515, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 32-9-101, MCA, is amended to read:

"32-9-101. Short title and purpose. (1) This part may be cited as the "Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including residential mortgage brokers, mortgage lenders, and mortgage loan originators, to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.

(3) The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the importance

1 of statewide participation in the nationwide mortgage licensing system and registry."

2
3 **Section 2.** Section 32-9-102, MCA, is amended to read:

4 **"32-9-102. License requirement -- registration.** (1) Unless exempt under 32-9-104, a ~~A~~ person or
5 entity may not act as a residential mortgage broker, mortgage lender, or mortgage loan originator unless licensed
6 under the provisions of this part.

7 ~~(2) A mortgage banker who provides services for a fee as an intermediary between a borrower and a~~
8 ~~lender in obtaining financing for a borrower that is to be secured by a residential dwelling for between one and~~
9 ~~four families is acting as a mortgage broker and must be licensed as a mortgage broker.~~

10 (2) Any person licensed as a mortgage broker or mortgage loan originator under this part or who is
11 employed as a registered mortgage loan originator is required to register with and maintain a valid unique
12 identifier issued by the nationwide mortgage licensing system and registry."

13
14 **Section 3.** Section 32-9-103, MCA, is amended to read:

15 **"32-9-103. Definitions.** As used in this part, the following definitions apply:

16 (1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common
17 for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to
18 obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that
19 the communication does not include offering or negotiating loan rates or terms or counseling consumers about
20 residential mortgage loan rates or terms.

21 (2) "Approved education course" means any course approved by the nationwide mortgage licensing
22 system and registry and recognized by the department.

23 (3) "Approved test provider" means any test provider approved by the department.

24 ~~(1)~~(4) "Bona fide third party" means a person or entity that provides services relative to residential
25 mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting
26 agencies.

27 ~~(2)~~(5) "Borrower" means an individual who is solicited to purchase or who purchases the services of a
28 mortgage broker for other than commercial mortgage lending.

29 ~~(3)~~(6) "Branch office" means a location other than a licensee's principal place of business.

30 ~~(4)~~(7) "Department" means the department of administration provided for in 2-15-1001, acting through

its division of banking and financial institutions.

(8) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

~~(5)(9)~~ "Designated manager" means ~~a person~~ an individual located in this state and employed by a mortgage broker entity, other than a sole proprietorship, as the ~~person~~ individual responsible for operating the business at the location where the ~~person~~ individual is employed. A designated manager must be licensed as a mortgage broker.

~~(6)(10)~~ "Entity" means a business organization, other than a sole proprietorship or an individual ~~person~~, that provides mortgage broker services.

(11) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

(12) "Immediate family member" means a spouse, child, sibling, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.

(13) "Independent contractor" means a person certified as an independent contractor pursuant to 39-71-417.

(14) "Individual" means a natural person.

~~(7) "Lender" means an entity that funds or services a residential mortgage loan.~~

(15) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

~~(8) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan.~~

(16) "Loan processor or underwriter" means an individual who performs administrative or clerical tasks, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a mortgage broker, a mortgage lender, a mortgage loan originator, or a registered mortgage loan originator.

~~(9)(17)~~ "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(10) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.~~

~~(11)~~(18) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a mortgage lender in obtaining financing for the borrower that is to be secured by a residential dwelling containing one to four units, for between one and four families that is licensed with the state, and that is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

(19) (a) "Mortgage lender" means a person, licensed by the state, that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a residential mortgage loan applicant. A mortgage lender may also be licensed as a mortgage broker upon meeting the qualifications for that license.

(b) The term does not include mortgage lenders that are:

(i) depository institutions;

(ii) subsidiaries that are owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) institutions regulated by the federal farm credit administration.

(20) (a) "Mortgage loan originator" means an individual who is employed by a mortgage broker to assist borrowers by originating a residential loan, who is licensed by the state, and who is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

(b) The term does not include an individual engaged solely as a loan processor or underwriter.

(21) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of mortgage brokers, mortgage loan originators, and registered mortgage loan originators.

(22) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

~~(12)~~(23) (a) "Originate" means:

~~(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and~~

1 ~~a person or entity that makes or funds mortgage loans;~~

2 ~~—— (b) to issue a commitment for a mortgage loan to a borrower; or~~

3 ~~—— (c) to place, assist in placing, or find a mortgage loan for a borrower.~~

4 (i) taking a residential mortgage loan application;

5 (ii) offering or negotiating terms of a residential mortgage loan for compensation or gain; or

6 (iii) assisting a consumer in obtaining or applying to obtain a residential mortgage loan by, including but
7 not limited to:

8 (A) advising on loan terms including rates, fees, other costs;

9 (B) preparing loan packages; and

10 (C) collecting information on behalf of the consumer with regard to a residential mortgage loan.

11 (b) The term does not include:

12 (i) the performance of purely administrative or clerical tasks as a loan processor or underwriter; or

13 (ii) the performance of real estate brokerage activities if done by a person licensed as a real estate
14 broker, unless the person is compensated by a mortgage lender, a mortgage broker, or mortgage loan originator
15 or by an agent of a mortgage lender, mortgage broker, or mortgage loan originator.

16 (24) "Person" means an individual, corporation, company, limited liability company, partnership, limited
17 liability partnership, trust, or association.

18 (25) "Real estate brokerage activities" means activities that involve offering or providing real estate
19 brokerage services to the public, including:

20 (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real
21 property;

22 (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

23 (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease,
24 rental, or exchange of real property other than in connection with providing financing with respect to the
25 transaction; or

26 (d) engaging in any activity for which a person is required to be licensed as a real estate salesperson
27 or real estate broker under Montana law.

28 (26) "Registered mortgage loan originator" means an individual who:

29 (a) assists borrowers by originating residential mortgage loans and therefore meets the definition of
30 mortgage loan originator except that the individual is not employed by a mortgage broker or mortgage lender but

1 is employed by one of the following:

2 (i) a depository institution;

3 (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking
4 agency; or

5 (iii) an institution regulated by the federal farm credit administration; and

6 (b) is not required by this part to be licensed but is required to be registered with and maintain a unique
7 identifier through the nationwide mortgage licensing system and registry.

8 (27) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured
9 by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in
10 regulation Z of the Truth in Lending Act, 12 CFR 226.2, or on residential real estate located in Montana.

11 ~~(43)~~(28) "Trust account" means a depository account with a financial institution that provides deposit
12 insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and
13 that is maintained solely for the holding and payment of bona fide third-party fees.

14 (29) "Unique identifier" means a number or other identifier assigned by protocols established by the
15 nationwide mortgage licensing system and registry."

16
17 **Section 4.** Section 32-9-104, MCA, is amended to read:

18 **"32-9-104. Exemptions -- proof of exemption.** (1) The provisions of this part do not apply to:

19 ~~(1) a person or entity that makes or collects loans, to the extent that those activities are subject to~~
20 ~~licensure or registration by this state under other provisions of Montana law unless the person or entity is also~~
21 ~~acting as a mortgage broker or loan originator;~~

22 ~~—— (2) (a) a bank or trust company chartered under Title 32, chapter 1, a bank or trust company chartered~~
23 ~~under the National Bank Acts in Title 12 of the United States Code, a building and loan association chartered~~
24 ~~under Title 32, chapter 2, a savings and loan association chartered under the Home Owners' Loan Act in Title~~
25 ~~12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under~~
26 ~~the Federal Credit Union Act in Title 12 of the United States Code;~~

27 ~~—— (b) any employee of an entity listed in subsection (2)(a); or~~

28 ~~—— (c) any subsidiary of an entity listed in subsection (2)(a) and any employee of the subsidiary if the~~
29 ~~subsidiary is subject to the examination and supervision of:~~

30 ~~—— (i) the department;~~

~~—— (ii) the federal deposit insurance corporation;~~
~~—— (iii) the federal reserve system;~~
~~—— (iv) the national credit union administration; or~~
~~—— (v) the department of the treasury through its office of the comptroller of the currency or office of thrift supervision;~~

~~—— (3) a person or entity engaged solely in commercial mortgage lending; or~~

~~—— (4) a political subdivision or governmental entity of the United States or any state of the United States.~~

(a) a registered mortgage loan originator and the employer of a registered mortgage loan originator when acting for or as an entity described in 32-9-103(26)(a)(i) through (26)(a)(iii), except that the requirement of registration with and maintenance of a unique identifier through the nationwide mortgage licensing system and registry applies;

(b) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member;

(c) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling owned by that individual; or

(d) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator.

(2) The burden of proving an exemption under this section is on the person claiming the exemption. The department shall create a form for requesting an exemption."

NEW SECTION. Section 5. Loan processors and underwriters. (1) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities pertaining to originating a residential mortgage loan.

(2) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless licensed under this part. Each independent contractor loan processor or underwriter licensed as mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

1
2 **Section 6.** Section 32-9-108, MCA, is amended to read:

3 **"32-9-108. Overall licensing requirements for mortgage brokers and mortgage loan originators.**

4 ~~All persons and entities~~ Any person, including a mortgage lender, desiring to conduct business as a mortgage
5 broker ~~or~~ and any person desiring to work as a mortgage loan originator shall apply to the department for a
6 license and pay a license fee under the provisions of this part. Applicants shall comply with all requirements of
7 this part, including but not limited to requisite work experience, prelicensing education, successful completion of
8 an examination, and completion of an application approved by the department. All licenses issued under this
9 section are nontransferable and nonassignable."

10
11 **NEW SECTION. Section 7. Prelicensing education requirements for mortgage brokers and**
12 **mortgage loan originators.** An individual seeking a mortgage broker's license or a mortgage loan originator's
13 license shall complete at least 20 hours of approved education courses, which must include:

- 14 (1) at least 3 hours of training on federal law and regulations;
15 (2) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending
16 issues; and
17 (3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

18
19 **Section 8.** Section 32-9-109, MCA, is amended to read:

20 **"32-9-109. Experience requirements.** (1) (a) An individual applying for a license as a mortgage broker
21 must have a minimum of 3 years of experience working as a mortgage loan originator, ~~as a mortgage banker,~~
22 or in a related field.

23 (b) An individual applying for a license as a mortgage loan originator must have a minimum of 6 months
24 of experience working in a related field.

25 (2) The department shall by rule establish what constitutes work in a related field."
26

27 **Section 9.** Section 32-9-110, MCA, is amended to read:

28 **"32-9-110. Examination requirements for mortgage brokers and mortgage loan originators.** (1)
29 ~~Individuals~~ An individual seeking a mortgage broker's license ~~and individuals seeking~~ or a mortgage loan
30 originator's license shall submit to an examination ~~provided for by the department. The department may use a~~

1 ~~third party to perform examination and grading services.~~

2 ~~(2) The examination must be designed to demonstrate that the applicant possesses competency to~~
3 ~~originate loans. The test may cover subject matter areas including but not limited to:~~

4 ~~—— (a) knowledge of this part;~~

5 ~~—— (b) knowledge of disclosures and protections that borrowers are entitled to by state and federal law;~~

6 ~~—— (c) the ability to read, understand, and explain appraisal basics, credit reports, and title commitments;~~

7 ~~and~~

8 ~~—— (d) the ability to evaluate credit, calculate a basic debt-to-income ratio, calculate loan-to-value ratios, and~~
9 ~~complete a basic loan application.~~

10 (2) In order to meet the examination requirement referred to in subsection (1), an individual shall pass,
11 in accordance with the standards established under this section, a qualified written exam developed by the
12 nationwide mortgage licensing system and registry and adopted by the department that is administered by an
13 approved test provider.

14 (3) A written examination may not be treated as a qualified written examination for purposes of this
15 section unless the exam adequately measures the applicant's knowledge and comprehension in appropriate
16 subject areas, including but not limited to:

17 (a) ethics;

18 (b) federal and state laws and regulations pertaining to mortgage origination; and

19 (c) federal and state laws and regulations pertaining to fraud, consumer protection, the nontraditional
20 mortgage product marketplace, and fair lending issues.

21 (4) An individual may not be considered to have passed a qualified examination unless the individual
22 achieves an exam score of at least 75%.

23 (5) The department shall by rule establish procedures for retesting after examination failures or after
24 lapse of license in compliance with provisions of the Secure and Fair Enforcement for Mortgage Licensing Act,
25 Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289."

26
27 **Section 10.** Section 32-9-115, MCA, is amended to read:

28 **"32-9-115. Application for mortgage broker license.** (1) An application for a mortgage broker license
29 must include:

30 (a) the proposed principal location of the business, with a photograph of the principal location and each

1 branch office at which business will be transacted. If the business is to be conducted out of a residence,
2 verification must be supplied concerning compliance with all zoning laws and regulations. The application for an
3 individual mortgage broker intending to work as an employee of another mortgage broker must contain the name
4 and principal address of the licensed employing mortgage broker.

5 (b) (i) the name and address of the sole proprietor;

6 (ii) the name and address of each partner; or

7 (iii) the name and address of any person that owns 10% or more of a mortgage broker entity that is other
8 than a sole proprietorship or partnership;

9 (c) ~~evidence of an irrevocable letter of credit or surety bond required by~~ that the applicant has met either
10 the surety bond or net worth requirement provided for in 32-9-123;

11 ~~(d) a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder,~~
12 ~~member, partner, designated manager, or employee of the applicant is currently under investigation, has been~~
13 ~~convicted of or has pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been~~
14 ~~subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing; and~~

15 ~~(e)(d)~~ evidence that the designated manager meets the requirements for licensure as a mortgage broker;

16 (e) evidence that the applicant has met the preclicensing education requirements of [section 7];

17 (f) a written statement of the applicant's personal employment and personal residential history during
18 the 7-year period preceding the date of the application for licensure;

19 (g) an independent credit report obtained from a consumer reporting agency described in section 603(p)
20 of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

21 (h) information pertaining to the applicant that is related to any administrative, civil, or criminal findings
22 by any governmental jurisdiction.

23 (2) The department shall investigate each individual applicant. The investigation shall include a criminal
24 records check based on the fingerprints of each individual applicant and a civil records check. The department
25 shall require each individual applicant to file a set of the applicant's fingerprints, taken by a law enforcement
26 agency, and any other information necessary to complete a statewide and nationwide criminal check with the
27 criminal investigation bureau of the department of justice for state processing and with the federal bureau of
28 investigation for federal processing. All costs associated with the criminal history check are the responsibility of
29 the applicant. Criminal history records provided to the department under this section are confidential, and the
30 department may use the records only to determine if the applicant is eligible for licensure. If an investigation

1 outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the
2 actual expenses of the investigation. ~~The department may deny the application if the applicant's criminal history~~
3 ~~demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant~~
4 ~~has had any adverse civil judgments involving fraudulent or dishonest dealings."~~

5
6 **NEW SECTION. Section 11. Application for mortgage lender license.** (1) The application for a
7 mortgage lender license must be in a form prescribed by the department.

8 (2) (a) The application must contain the name and complete business address or addresses of the
9 applicant. If the applicant is other than an individual, the application must contain the names and complete
10 business and residential addresses of each officer, director, manager, and ultimate equity owner of a 10% or
11 greater interest in the entity making the application.

12 (b) The application must include a detailed description of the proposed activities of the licensee that the
13 department may require by rule.

14 (c) The application must also include the following:

15 (i) evidence that the applicant meets the minimum surety bond, irrevocable letter of credit, or net worth
16 requirements provided for in 32-9-123;

17 (ii) an affirmation that the applicant and its employees, independent contractors, officers, directors, or
18 principals are at least 18 years of age;

19 (iii) a biographical statement providing information as to the character, fitness, financial and business
20 responsibility, background, experience, and criminal convictions of any person that:

21 (A) owns or controls, directly or indirectly, 10% or more of any class of stock of the entity making the
22 application;

23 (B) controls with respect to an applicant, directly or indirectly, the election of 25% or more of the
24 members of the board of directors or, if a limited liability company, controls the election of its manager; or

25 (C) significantly influences or controls the management of the entity making the application.

26 (3) The department may require that each officer, director, and ultimate equity owner of 10% or greater
27 interest in the entity making the application file a personal financial statement, a biographical report, and a
28 complete set of fingerprints taken by an authorized law enforcement officer or other person authorized by the
29 state.

30 (4) If the applicant is other than an individual, evidence must be submitted that the applicant is duly

1 incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability
2 company, or other lawful entity under the laws of this state or another state.

3 (5) An applicant shall provide all other information required by rule.

4 (6) The applicant may obtain branch licenses upon compliance with this section and the applicable
5 provisions of this part.

6 (7) An applicant may be simultaneously licensed as a mortgage lender and mortgage broker provided
7 that all requirements for licensure for each license are met, subject to a single application fee as set forth in
8 32-9-117.

9
10 **Section 12.** Section 32-9-116, MCA, is amended to read:

11 **"32-9-116. Application for mortgage loan originator license -- employment of mortgage loan**
12 **originator.** (1) An application for a mortgage loan originator license must include:

13 (a) the name and address of the applicant;

14 (b) evidence of the applicant's experience and knowledge of the mortgage industry; ~~and~~

15 (c) evidence that the applicant has met the prelicensing education requirements of [section 7];

16 (d) a written statement of the applicant's personal employment and personal residential history during
17 the 7-year period preceding the date of the application for licensing;

18 (e) an independent credit report obtained from a consumer reporting agency described in section 603(p)
19 of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

20 (f) information pertaining to the applicant that is related to any administrative, civil, or criminal findings
21 by any governmental jurisdiction.

22 ~~(c) a statement as to whether the applicant is under investigation, has been convicted of or pleaded guilty~~
23 ~~to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment~~
24 ~~for any conduct involving fraudulent or dishonest dealing.~~

25 (2) The department shall investigate each applicant. The investigation shall include a criminal records
26 check based on the fingerprints of the applicant and a civil records check. The department shall require each
27 applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information
28 necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the
29 department of justice for state processing and with the federal bureau of investigation for federal processing. All
30 costs associated with the criminal history check are the responsibility of the applicant. Criminal history records

provided to the department under this section are confidential and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. ~~The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.~~

(3) A mortgage loan originator may transact business only for an employing mortgage broker licensed in accordance with the provisions of this part. Each original license issued to a mortgage loan originator must be provided to and maintained by the employing mortgage broker at the mortgage broker's main office. A copy of the mortgage loan originator's license must be displayed at the office where that mortgage loan originator principally transacts business.

(4) If the employment of a mortgage loan originator is terminated, the mortgage broker shall return the mortgage loan originator's license to the department within 5 business days after the termination. For a period of 6 months after the termination of employment, the mortgage loan originator may request the transfer of the license to another mortgage broker or mortgage lender by submitting a relocation application to the department, along with a fee established by the department by rule. The return of the license of any mortgage loan originator to the department that is not transferred to another mortgage broker terminates the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until department procedures have been followed to reinstate the license. The license of any mortgage loan originator that has been returned to the department and not transferred within 6 months of termination of employment must be canceled."

Section 13. Section 32-9-117, MCA, is amended to read:

"32-9-117. Fees -- license renewal -- disposition of fees. (1) (a) Except as provided in subsection (1)(b), an individual mortgage broker or an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of \$500. A mortgage loan originator shall pay an initial nonrefundable license application fee of \$400. An individual mortgage lender or an entity seeking licensure as a mortgage lender shall pay an initial nonrefundable license application fee of \$750 and an additional application fee of \$250 for any branch location. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than ~~6 months~~ 1 year.

(b) (i) An individual who is seeking licensure as a mortgage broker and who is the ~~sole~~ owner of an entity

1 that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of
2 \$500.

3 (ii) The department shall assess only one licensing fee of \$750 for an applicant seeking dual licensure
4 as a mortgage broker and a mortgage lender.

5 (2) The license of a mortgage broker, mortgage lender, or mortgage loan originator is valid for a ~~4-year~~
6 2-year period and expires on ~~June 30~~ December 31. ~~Every~~ A licensee shall, on or before ~~May 31~~ November 30
7 of the year in which a license expires, submit a renewal application and pay to the department a renewal fee in
8 an amount set by the department by rule. The department shall establish by rule the requirements for renewal
9 applications. The department shall establish a single renewal fee for individuals and entities described in
10 ~~subsection~~ subsections (1)(b)(i) and (1)(b)(ii) ~~that are licensed as mortgage brokers~~. An individual described in
11 subsection (1)(b)(i) may act as a designated manager under 32-9-122 and is not subject to any additional license
12 fees for acting in the capacity of a designated manager. The fees set by the department must be commensurate
13 with the costs of the program. Failure to submit required information or fees within the time prescribed
14 automatically revokes the license.

15 (3) An application for renewal must be accompanied by evidence that the annual continuing education
16 requirements provided for in 32-9-118 have been met and that there has not been a material change in the status
17 of the licensee in the preceding ~~42~~ 24 months.

18 (4) All fees collected under this section must be deposited in the department's state special revenue fund
19 to be used by the department in administering the provisions of this part.

20 (5) An applicant for a mortgage broker or mortgage loan originator license renewal shall provide
21 evidence of registration with and maintenance of a unique identifier issued by the nationwide mortgage licensing
22 system and registry."

23
24 **NEW SECTION. Section 14. Compliance of current mortgage brokers and mortgage loan**
25 **originator licensees with background check and minimum standards.** (1) Upon application to the
26 department by a current licensee for renewal of a mortgage broker or mortgage loan originator license, the
27 applicant shall provide evidence of registration with and maintenance of a unique identifier issued by the
28 nationwide mortgage licensing system and registry and shall simultaneously furnish to the nationwide mortgage
29 and licensing system and registry the following:

30 (a) an authorization to the nationwide mortgage licensing system and registry to request that the federal

bureau of investigation access previously submitted fingerprints for purposes of a supplemental criminal history background check; and

(b) a written statement of personal history and experience, including authorization for the nationwide mortgage licensing system and registry to obtain:

(i) a current independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(ii) information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(2) Upon application to the department by a current licensee for renewal of a mortgage broker, mortgage lender, or mortgage loan originator license, the department shall commence a supplemental investigation of the applicant and may not renew any license if any of the following facts are found:

(a) (i) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or their equivalent revoked in any governmental jurisdiction;

(ii) for the purposes of subsection (2)(a)(i), "revoked" means that the license of a mortgage broker, mortgage lender, or mortgage loan originator has been expressly revoked as the result of a publicly adjudicated disciplinary or enforcement action by the department or other governmental jurisdiction. The term does not include other forms of license treatment such as surrender of a license, vacation of a license, or lapse of a license that are not to be considered a license revocation if that license treatment is to be the determining factor relied upon by the department in denying, refusing to renew, or revoking the existing license of a mortgage broker, mortgage lender, or mortgage loan originator. The nature of the license treatment and not the label given it by any governmental jurisdiction is controlling.

(b) the applicant has been convicted of or plead guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering;

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section.

(3) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (2)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on

1 the applicant's part with respect to subsection (2)(c).

2
3 **NEW SECTION. Section 15. Waiver of examination and education requirements for current**
4 **mortgage broker and mortgage loan originator licensees.** (1) Upon application by a current mortgage broker
5 or mortgage loan originator licensee for license renewal, the department shall grant a waiver of the prelicensing
6 education requirements established in [section 7] and the Secure and Fair Enforcement for Mortgage Licensing
7 Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, if:

8 (a) the applicant is currently acting as a state-licensed mortgage broker or mortgage loan originator in
9 this state;

10 (b) the applicant's license is valid and current;

11 (c) the applicant has never had a mortgage broker or mortgage loan originator license revoked or
12 suspended in any jurisdiction;

13 (d) the applicant has not been convicted of a felony that would authorize the department to deny a
14 license;

15 (e) the applicant otherwise meets or exceeds all applicable requirements of this part for licensure
16 including:

17 (i) the applicant has demonstrated financial responsibility, character, and general fitness to engage in
18 the business of originating mortgage loans; and

19 (ii) the applicant has provided satisfactory evidence of a surety bond or net worth requirement as provided
20 in 32-9-123; and

21 (f) the applicant can demonstrate at least one of the following:

22 (i) completion of a minimum of 20 hours of approved education courses within the 5 years preceding the
23 date of the application;

24 (ii) a passing score on a written examination administered by an approved test provider within the 5 years
25 preceding the date of the application; or

26 (iii) employment as a licensed mortgage broker, mortgage lender, or mortgage loan originator under this
27 part for a period of 2 years as of the date of application.

28 (2) This section may not be construed as granting any mortgage broker or mortgage loan originator a
29 waiver of the continuing education requirements prescribed under 32-9-118.

1 **NEW SECTION. Section 16. Denial of mortgage broker, mortgage lender, or mortgage loan**

2 **originator license application or license renewal.** (1) The department may not issue or renew any mortgage
3 broker, mortgage lender, or mortgage loan originator license if any of the following facts are found during the
4 application procedure:

5 (a) (i) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator
6 license or their equivalent revoked in any governmental jurisdiction;

7 (ii) for the purposes of subsection (1)(a)(i), "revoked" means that the license of a mortgage broker,
8 mortgage lender, or mortgage loan originator has been expressly revoked as the result of a publicly adjudicated
9 disciplinary or enforcement action by the department or other governmental jurisdiction. The term does not
10 include other forms of license treatment such as surrender of a license, vacation of a license, or lapse of a license
11 that are not to be considered a license revocation if that license treatment is to be the determining factor relied
12 upon by the department in denying, refusing to renew, or revoking the existing license of a mortgage broker,
13 mortgage lender, or mortgage loan originator. The nature of the license treatment and not the label given it by
14 any governmental jurisdiction is controlling.

15 (b) the applicant has been convicted of or plead guilty or nolo contendere to a felony in a domestic,
16 foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal
17 or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust,
18 or money laundering;

19 (c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to
20 command the confidence of the community and to warrant a determination that the mortgage broker, mortgage
21 lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section.

22 (2) The department shall determine that the applicant has demonstrated the qualities of financial
23 responsibility, character, and general fitness referred to in subsection (1)(c) if all other requirements for licensure
24 under this section have been satisfied and the department's investigation does not reveal a specific problem on
25 the applicant's part with respect to subsection (1)(c).

26 (3) For purposes of this section and to reduce the points of contact for investigation by the department,
27 the department may use the nationwide mortgage licensing system and registry as a channeling agent for
28 requesting information.

29
30 **Section 17.** Section 32-9-118, MCA, is amended to read:

1 **"32-9-118. Continuing education requirements for mortgage loan originators and mortgage**
2 **brokers.** All mortgage loan originators and all individual mortgage brokers shall complete and submit to the
3 department evidence of at least 12 hours of continuing education ~~every for each year~~ of the 2-year period that
4 their license is valid at the time they submit their license renewal applications. The 12 hours per year of continuing
5 education must be obtained in ~~courses or programs of study approved by the department and in areas~~
6 ~~established by the department by rule~~ an approved education course."

7
8 **Section 18.** Section 32-9-121, MCA, is amended to read:

9 **"32-9-121. In-state office requirement -- records maintenance -- advertising requirement. (1)**
10 Except for an individual mortgage broker working as an employee of a licensed mortgage broker, a person or
11 entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its
12 own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state.
13 Licensees shall maintain books, accounts, records, and copies of residential mortgage loan files and trust account
14 records that are necessary to enable the department to determine whether a licensee is in compliance with the
15 applicable laws and rules. The required materials must be maintained at the Montana office location where
16 services are provided, and the materials must be maintained in accordance with generally accepted accounting
17 principles and good business practices. Each office location must have at least one phone line. Licensees shall
18 pay state income tax on all income earned in Montana.

19 (2) A mortgage broker shall maintain a residential mortgage file for a minimum of 5 years from the date
20 of the last activity pertaining to the file. A mortgage broker shall maintain trust account records for a minimum of
21 5 years.

22 (3) (a) In any printed, published, televised, e-mail, or internet advertisement for the provision of services,
23 the following information must be included:

24 (i) a name, address, and license number for each mortgage broker or mortgage loan originator
25 advertising as an individual; or

26 (ii) the name, address, and license number only of the licensed entity when the licensed entity is
27 advertising on its own behalf or as an entity with one or more mortgage brokers or mortgage loan originators also
28 listed.

29 (b) For the purposes of this subsection (3), advertising does not include stationery or business forms but
30 does include business cards. A business card must include a mortgage broker's or loan originator's license

number but is not required to list the entity's license number if the entity's name is listed."

Section 19. Section 32-9-123, MCA, is amended to read:

"32-9-123. ~~Irrevocable letter of credit or surety~~ Surety bond, irrevocable letter of credit, or net worth requirement -- notice of legal action. (1) ~~(a) Each~~ Except as provided in subsection (1)(b), each mortgage broker ~~and mortgage lender~~, other than an individual mortgage broker working as an employee of a mortgage broker ~~or mortgage lender~~, shall maintain at all times ~~an irrevocable letter of credit or a~~ surety bond, naming the department as a beneficiary, ~~in the amount of \$25,000 for each principal location and branch office identified in the application for licensure.~~

(b) A mortgage lender may provide an irrevocable letter of credit naming the department as beneficiary in lieu of a surety bond as provided in subsection (3).

(c) The department shall use the proceeds of the irrevocable letters of credit or surety bonds to reimburse borrowers or bona fide third parties who successfully demonstrate a financial loss because of an act of a licensee mortgage broker or mortgage lender that violates the provisions of this part.

(2) (a) A mortgage broker or mortgage lender is required to maintain only one surety bond or letter of credit for the principal location and all other locations identified in the mortgage broker's or mortgage lender's application for licensure.

(b) The amount of the required surety bond or letter of credit must be calculated by combining the annual loan production amounts for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

(i) \$25,000 for a combined annual loan production that does not exceed \$50 million per year; or

(ii) \$50,000 for annual loan production above \$50 million per year.

(3) In lieu of a surety bond, a mortgage lender may provide an irrevocable letter of credit issued by a federally insured banking institution in an amount equal to and on the same basis as the surety bond requirements referenced in subsections (2)(a) and (2)(b).

(4) (a) In lieu of a surety bond, a mortgage broker may meet a minimum net worth requirement, and in lieu of a surety bond or irrevocable letter of credit, a mortgage lender may meet a minimum net worth requirement.

(b) Minimum net worth must be maintained in an amount determined by the department that reflects the dollar amount of loans originated.

1 (c) The department shall adopt rules with respect to the requirements for minimum net worth as are
2 necessary to accomplish the purposes of this part.

3 (5) Evidence that a mortgage broker or a mortgage lender is approved by the department of housing and
4 urban development to originate loans insured by the federal housing administration must be considered as
5 satisfying the net worth requirement.

6 ~~(2)(6)~~ A mortgage broker, mortgage lender, or mortgage loan originator shall give notice to the
7 department by certified mail within 15 days of the mortgage broker's, mortgage lender's, or mortgage loan
8 originator's obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil
9 action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage
10 broker, mortgage lender, anyone having an ownership interest in a mortgage broker entity or mortgage lender
11 entity, or a mortgage loan originator. In the case of a legal action, the notice must include a copy of the criminal
12 or civil judgment."
13

14 **Section 20.** Section 32-9-124, MCA, is amended to read:

15 **"32-9-124. Prohibitions -- required disclosure.** (1) A mortgage broker, mortgage lender, or mortgage
16 loan originator may not do any of the following:

17 (a) retain original documents owned by the borrower and submitted in connection with the loan
18 application;

19 (b) directly or indirectly employ any scheme to defraud or mislead a borrower, a mortgage lender, or any
20 other person;

21 (c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan,
22 including but not limited to interest rates, points, costs at closing, or other financing terms or conditions;

23 (d) fail to pay a bona fide third party later than 30 days after recording of the loan closing documents or
24 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the
25 parties;

26 (e) accept any fees or compensation at closing that were not disclosed as required by state or federal
27 law;

28 (f) accept any fees or compensation in excess of those allowed by state or federal law; ~~or~~

29 (g) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker,
30 mortgage lender, or mortgage loan originator;:

1 (h) (i) assist or aid and abet any person in the conduct of business under this part without a valid license
2 as required under this part; or

3 (ii) if a mortgage broker or mortgage loan originator, conduct any business covered by the provisions of
4 the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act
5 of 2008, Public Law 110-289, without holding a valid license as required under this part;

6 (i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state
7 or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business
8 authorized by or conducted under this part;

9 (j) negligently make any false statement or knowingly and willfully make any omission of material fact
10 in connection with any information or reports filed with a government agency or the nationwide mortgage licensing
11 system and registry or in connection with any investigation conducted by the department or another governmental
12 agency.

13 (2) Prior to providing mortgage broker services to a borrower, the mortgage broker licensee, in addition
14 to other disclosures required by this part, subsection (3) ~~of this section~~, and other state and federal laws, shall
15 provide to the borrower ~~at the time of application~~ a written disclosure containing substantially the following
16 language, which must be signed by the borrower:

17 "MORTGAGE LOAN ORIGINATION DISCLOSURE

18 (Name of licensee) is a licensed mortgage broker in Montana authorized to provide mortgage brokerage
19 services to you in connection with your real estate loan. Lenders whose loan products we distribute generally
20 provide their loan products to us at a wholesale rate. The rate you pay may be higher.

21 SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:

22 (1) (name of licensee) is acting as an independent contractor and not as your agent;

23 (2) (name of licensee) enters into separate independent contractor agreements with various lenders; and

24 (3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does
25 not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best
26 terms available.

27 SECTION 2. OUR COMPENSATION.

28 (1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will
29 include (name of licensee's) compensation.

30 (2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either

1 you or the lender.

2 (3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both
3 you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more
4 money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be
5 able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of
6 licensee) will be paid directly by the lender.

7 (4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related
8 servicing rights in the market place or based on other services, goods, or facilities performed or provided by
9 (name of licensee) to the lender.

10 By signing below, you acknowledge that you have received a copy of this disclosure."

11 (3) The disclosure must include the address of the department's division of banking and financial
12 institutions, the division's phone number and website, and a statement informing borrowers that the division can
13 provide information about whether a mortgage broker or mortgage loan originator is licensed as well as other
14 legally available information.

15 (4) The disclosure must include the unique identifier issued by the nationwide mortgage licensing system
16 and registry for the mortgage broker or mortgage loan originator."

17

18 **Section 21.** Section 32-9-126, MCA, is amended to read:

19 **"32-9-126. Revocation, suspension, and reinstatement of licenses.** (1) The department, upon giving
20 ~~the a mortgage broker, mortgage lender, or mortgage loan originator~~ licensee 10 days' written notice, which
21 includes a statement of the grounds for the proposed suspension or revocation, and informing the licensee that
22 the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend or
23 revoke a license if it finds that the licensee has violated any provision of this part.

24 (2) All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the
25 address for which the license was issued.

26 (3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal
27 liability for acts committed prior to the revocation, suspension, or surrender of the license.

28 (4) The department may reinstate any suspended or revoked license if there is not a fact or condition
29 existing at the time of reinstatement that would have justified the department's refusal to originally issue the
30 license. ~~If a license has been revoked for cause, an application may not be made for the issuance of a new~~

1 ~~license or the reinstatement of a revoked license for a period of 6 months from the date of revocation."~~

2
3 **NEW SECTION. Section 22. Unique identifier for mortgage brokers, mortgage loan originators,**
4 **and registered mortgage loan originators.** (1) Each licensed mortgage broker, mortgage loan originator, and
5 registered mortgage loan originator shall post the mortgage broker's, mortgage loan originator's, or registered
6 mortgage loan originator's unique identifier in a conspicuous place within the office where the licensee principally
7 transacts business.

8 (2) The department shall post on its website the names of all licensees, together with their license
9 numbers. In conjunction with that posting, the department shall also provide the unique identifier of all licensed
10 mortgage brokers and mortgage loan originators so that consumers, borrowers, and the public may access that
11 information for use in conjunction with the nationwide mortgage licensing system and registry.

12 (3) The department shall also post on its website the names and unique identifiers of all registered
13 mortgage loan originators conducting business in the state.

14
15 **NEW SECTION. Section 23. Mortgage call reports.** Each mortgage broker entity shall submit to the
16 nationwide mortgage licensing system and registry reports of condition, which must be in the form and must
17 contain information that the nationwide mortgage licensing system and registry may require.

18
19 **NEW SECTION. Section 24. Nationwide mortgage licensing system and registry information**
20 **challenge process.** The department shall establish a process under which mortgage brokers and mortgage loan
21 originators may challenge information entered into the nationwide mortgage licensing system and registry by the
22 department.

23
24 **Section 25.** Section 32-9-130, MCA, is amended to read:

25 **"32-9-130. Department authority -- rulemaking.** (1) The department shall adopt rules necessary to
26 carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable
27 through the power of suspension or revocation of licenses.

28 (2) The rules must address:

29 (a) revocation or suspension of licenses for cause;

30 (b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision

1 of this part and handling of complaints made by any person in connection with any business transacted by a
2 licensee;

3 (c) (i) ensuring that all persons are informed of their right to contest a decision by the department under
4 the Montana Administrative Procedure Act; and

5 (ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing
6 cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

7 (d) prescribing forms for applications;

8 (e) developing or approving tests to be given as a prerequisite for licensure;

9 (f) approval of programs for continuing education; and

10 (g) establishing fees for testing, continuing education programs, and license renewals.

11 (3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any
12 act or practice violating any provision of this part.

13 (4) (a) The department may at any time examine any mortgage broker transaction and may examine the
14 residential mortgage loan files, trust account records, and other information related to mortgage loan transactions
15 of a licensee.

16 (b) When conducting a financial examination or an audit of a licensee, the department may require the
17 licensee to pay a fee of \$300 per day for each examiner performing the financial examination or audit.

18 (c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the
19 license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or
20 revoked.

21 (5) (a) The department may:

22 (i) exchange information with federal and state regulatory agencies, the attorney general, the consumer
23 protection office of the department, and the legislative auditor;

24 (ii) exchange information other than confidential information with the mortgage asset research institute,
25 inc., and other similar organizations; and

26 (iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

27 (b) Except as provided in subsection (5)(a)(i), the department shall treat all confidential criminal justice
28 information as confidential unless otherwise required by law.

29 (6) The department shall prepare, at least once each calendar year, a roster listing the name and
30 locations for each mortgage broker and a roster of all mortgage loan originators and designated managers and

1 the name of their employing brokers. The roster must be available to interested persons and to the general public.

2 (7) Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act,
3 Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized
4 to:

5 (a) supervise and enforce the provisions of this part, including the suspension, termination, revocation,
6 or nonrenewal of a license for violation of state or federal law;

7 (b) ensure that all mortgage broker and mortgage loan originator licensees under this part register with
8 and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry; and

9 (c) regularly report violations of state or federal law and enforcement actions to the nationwide mortgage
10 licensing system and registry."

11
12 **Section 26.** Section 32-9-133, MCA, is amended to read:

13 **"32-9-133. Penalties -- restitution.** (1) If the department finds, after providing a 10-day written notice
14 that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the
15 Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative
16 of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed
17 to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make
18 required reports to the department, has furnished false information to the department, or has operated without
19 a required license, the department may impose a civil penalty not to exceed \$5,000 for the first violation and not
20 to exceed \$10,000 for each subsequent violation.

21 (2) The department may issue an order requiring restitution to borrowers and reimbursement of the
22 department's cost in bringing the administrative action. In addition, the department may issue an order revoking
23 or suspending the right of the person or licensee, directly or through an officer, agent, employee, or
24 representative, to do business in this state as a licensee or to engage in the mortgage broker business.

25 (3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail
26 to the address for which the license was issued or in the case of an unlicensed business to the last-known
27 address of record.

28 (4) The fines must be deposited in the state general fund.

29 (5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker or mortgage
30 loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be

1 punished by a fine of not less than \$250 or more than \$1,000, by imprisonment in the county jail for not less than
2 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate
3 offense."

4
5 **NEW SECTION. Section 27. Confidentiality.** (1) (a) Except as otherwise provided in section 1512 of
6 the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act
7 of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law
8 regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage
9 licensing system and registry and any privilege arising under federal or state law, including the rules of a federal
10 or state court, pertaining to the information or material continue to apply to the information or material after the
11 information or material has been disclosed to the nationwide mortgage licensing system and registry.

12 (b) Information and material may be shared with all state and federal regulatory officials with mortgage
13 industry oversight authority and with the board of governors of the federal reserve system without the loss of
14 confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana
15 law.

16 (2) The department may enter into agreements or sharing arrangements with other governmental
17 agencies, the conference of state bank supervisors, the American association of residential mortgage regulators,
18 or associations representing governmental agencies as established by rule of the department.

19 (3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

20 (a) disclosure under a federal or state law governing disclosure to the public of information held by an
21 officer or an agency of the federal government or the respective state; or

22 (b) subpoena, discovery, or admission into evidence in any private civil action or administrative process
23 unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning
24 the information or material, the person to whom the information or material pertains waives, in whole or in part,
25 that privilege.

26 (4) Montana law relating to the disclosure of confidential supervisory information or information or material
27 described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section
28 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic
29 Recovery Act, Public Law 110-289.

30 (5) Examination reports, information contained in examination reports, and examiners' work papers are

1 confidential, subject to the licensee's and any uninvolved person's reasonable expectation of privacy and,
2 although filed with the department as provided in this part, are not subject to public inspection.

3 (6) This section does not apply to information or material relating to the employment history of and
4 publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, and
5 mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for
6 public access.

7
8 **NEW SECTION. Section 28. Repealer.** Sections 32-10-101, 32-10-102, 32-10-103, 32-10-201,
9 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303,
10 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501,
11 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, and
12 32-10-515, MCA, are repealed.

13
14 **NEW SECTION. Section 29. Codification instruction.** [Sections 5, 7, 11, 14 through 16, 22 through
15 24, and 27] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title
16 32, chapter 9, part 1, apply to [sections 5, 7, 11, 14 through 16, 22 through 24, and 27].

17
18 **NEW SECTION. Section 30. Severability.** If a part of [this act] is invalid, all valid parts that are
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
20 the part remains in effect in all valid applications that are severable from the invalid applications.

21
22 **NEW SECTION. Section 31. Effective date.** [This act] is effective July 1, 2009.

23
24 **NEW SECTION. Section 32. Termination.** [Sections 14 and 15] terminate December 31, 2010.

25 - END -